

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte UNDO WENNING, HANS-FRIEDER EBERHARDT,
MICHAEL NEUMANN and THOMAS ZEILER

Appeal No. 2004-1333
Application 09/969,190

ON BRIEF

Before COHEN, FRANKFORT, and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 21, all of the claims pending in this application.¹

¹Although an oral hearing was scheduled for August 17, 2004 and confirmed by appellants in a paper filed July 22, 2004 (Paper No. 20), we note that no representative for appellants appeared to argue the present application, nor in any way timely communicated an intention not to attend the oral hearing.

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As noted on page 1 of the specification, appellants' invention lies in the field of vacuum-insulated walls and, more particularly, thermally insulating walls, e.g., for refrigeration appliances, with an evacuated inner space that is filled with thermally insulating material that can be evacuated and that is at least as far as possible surrounded, in a vacuum-tight manner, by gas and water vapor impermeable inner and outer claddings formed of thermoplastic material. Independent claims 1, 20 and 21 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Luetkens, Jr. et al. (Luetkens)	5,128,196	Jul. 7, 1992
Buckley	5,722,482	Mar. 3, 1998
Wynne	WO 98/29309	Jul. 9, 1998

Claims 1, 11, 12, 20 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wynne.

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Claims 2 through 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wynne in view of Luetkens.

Claims 10 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wynne alone.

Claims 14 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wynne in view of Buckley.

Rather than attempt to reiterate the examiner's full commentary with respect to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the examiner's answer (Paper No. 16, mailed November 25, 2003) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 15, filed October 23, 2003) for the arguments thereagainst.

OPINION

Preliminary to discussing the rejections on appeal, we note that on page 7 of the brief appellants have indicated that claims 1, 20 and 21 are independent and do not stand or fall together.

In addition, appellants have indicated that claims 2 through 19 are to stand or fall with claim 1. Accordingly, we will treat claims 1, 20 and 21 in our discussions below and treat claims 2 through 19 as standing or falling with claim 1.

In responding to the examiner's rejection of independent claims 1, 20 and 21 under 35 U.S.C. § 102(b) based on Wynne, appellants have pointed to the same limitation in each of the independent claims relating to

a shaped, thermoplastic, substantially gas and water vapor impermeable outer cladding, and a shaped, thermoplastic, substantially gas and water vapor impermeable inner cladding,

urging that Wynne does not show shaped inner and outer claddings, and that because the examiner considers the metal foil layer of barrier film material (41) of Wynne's vacuum insulating members to be part of the inner and outer claddings therein, the inner and outer claddings of Wynne cannot be considered thermoplastic claddings as claimed in the instant application.

For essentially the same reasons as set forth in the examiner's answer, we find these arguments unpersuasive. Looking, for example, to appellants' claim 20, we note that Wynne discloses (in Fig. 5) a housing/container (90) that may be used

for refrigeration purposes, said housing/container comprising a shaped, thermoplastic, substantially gas and water impermeable outer cladding on the outer surfaces of the container, and a shaped, thermoplastic, substantially gas and water impermeable inner cladding on the inner surfaces of the container, each of said claddings being a portion of the plastic film envelope or bag (115) used in forming the thermally insulated housing/container (90), said inner and outer claddings forming a substantially vacuum-tight interspace therebetween, and an evacuated thermal insulation (92) filling said interspace.

As can be readily seen in Figures 5-9 of Wynne, and discerned from the disclosure thereof at pages 5-6, the inner and outer claddings are clearly "shaped" during the formation of housing/container (90) as portions of the plastic film bag (115) are sucked or pulled down into the open end of the foam box (92) and against the outer walls of the box and into grooves (96) formed in the walls of the box. Appellants' line of argument on page 8 of the brief appears to address pre-forming or pre-shaping of the inner and outer cladding panels to provide a degree of form stiffness and stability to such panels prior to assembly of the refrigeration housing or appliance, however, the broad

language used in claims 1, 20 and 21 on appeal is not so limited, and is clearly readable on the shaping of the inner and outer claddings that takes place in Wynne during vacuum formation of the final housing/container (90) therein.

As for appellants' assertion that the barrier film material of Wynne cannot be considered to define thermoplastic claddings as claimed in the instant application, we note that independent claims 1, 20 and 21 on appeal are each drafted using the open-ended transitional term "comprising" and thus do not exclude additional, unrecited elements. Wynne describes the barrier film material therein (at page 4) as being preferably formed of "a plurality of polyester or MYLAR layers including an inner layer of heat-sealable polyethylene and an outer metalized or aluminum layer which is formed by laminating a metal foil to the film layer or by metal deposition on the layer." However, in describing the housing/container embodiment of Figure 5, Wynne specifically describes the bag (115) formed of the above-noted barrier film material as being a "plastic film envelope or bag" (page 6, line 8). Moreover, we note that appellants' own specification (page 5) indicates that the inner and outer claddings of the refrigeration housing or appliance therein can

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avoid water vapor and gas permeability particularly reliably if a layer of the cladding is formed by a metal layer produced by sputtering or by use of a plastic/metal composite film. For these reasons, we find appellants' argument regarding the "thermoplastic" language of claims 1, 20 and 21 on appeal to be unpersuasive.

In light of the foregoing, we will sustain the examiner's rejection of claims 1, 20 and 21 on appeal under 35 U.S.C. § 102(b) as being anticipated by Wynne. Per appellants' grouping of claims set forth on page 7 of the brief, it follows that claims 2 through 19 will fall with claim 1, and that the examiner's various rejections under 35 U.S.C. § 103(a) of those claims will also be sustained.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR §
1.136(a).

AFFIRMED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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JOHN P. McQUADE)	
Administrative Patent Judge)	

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